L. Kristopher Rath (5749)
HUTCHINSON & STEFFEN, L.L.C.
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
krath@hutchlegal.com
(702) 385-2500
(702) 385-2086 fax

Jonathan T. Suder[1]
Edward R. Nelson, III[2]
FRIEDMAN, SUDER & COOKE
Tindall Square Warehouse No. 1
604 East 4th Street, Suite 200
Fort Worth, Texas 76102
nelson@fsclaw.com
(817) 334-0400
(817) 334-0401 fax

ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

1ST MEDIA LLC, Plaintiff, v. NAPSTER, INC., REALNETWORKS, INC., KSOLO, INC. and SLEP-TONE ENTERTAINMENT CORPORATION d/b/a SOUND CHOICE ACCOMPANIMENT TRACKS, Defendants.	CIVIL ACTION NO. ______________ **PLAINTIFF'S ORIGINAL COMPLAINT** **JURY DEMANDED**

[1] Pursuant to LR IA 10-2 (c), Attorney will comply with LR IA 10-2 within thirty days.
[2] Pursuant to LR IA 10-2 (c), Attorney will comply with LR IA 10-2 within thirty days.

Dockets.Justia.com

Plaintiff 1ST MEDIA LLC brings this action against Defendants NAPSTER INC., REALNETWORKS, INC., KSOLO, INC., and ENTERTAINMENT CORPORATION d/b/a SOUND CHOICE ACCOMPANIMENT TRACKS, alleging as follows:

I. JURISDICTION AND VENUE

1. Jurisdiction exists under 28 U.S.C. § 1338(a) because the Defendants are charged with patent infringement under 35 U.S.C. §§ 271 and 281.

2. The Defendants each have transacted and, at the time of the filing of this Complaint, are transacting businesses in this Judicial District involving products, systems, and/or services violative of Plaintiff's patent. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

II. THE PARTIES

3. Plaintiff 1ST MEDIA LLC is a limited liability company organized and existing under the laws of the State of Nevada, with its principal place of business in Las Vegas, Nevada. 1st Media is the assignee of, owns all right, title and interest in, and has standing to sue for infringement of United States Patent No. 5,464,946 entitled "System and Apparatus for Interactive Multimedia Entertainment" (the "'946 Patent"). The '946 Patent was duly and legally issued to Dr. Scott Lewis on November 7, 1995. A true and correct copy of the '946 Patent is attached as Exhibit "A" and incorporated as part of this Complaint.

4. NAPSTER, INC. is a Delaware corporation with offices at 9044 Melrose Avenue, Los Angeles, CA. Napster may be served with process by serving its registered agent, William E. Growney, Jr., at 9044 Melrose Avenue, Los Angeles, CA 90069. Napster has made, sold, offered for

sale, and offers for sale products and services that infringe one or more claims of the '946 Patent. Napster has infringed, and continues to infringe, the '946 Patent either directly or through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

5. REALNETWORKS, INC. is a Washington corporation with offices at 2601 Elliott Avenue, Suite 1000, Seattle, WA. RealNetworks may be served with process by serving its registered agent, Robert R. Kimball, at 2601 Elliott Avenue, Suite 1000, Seattle, WA. RealNetworks has made, sold, offered for sale, and offers for sale products and services that infringe one or more claims of the '946 Patent. RealNetworks has infringed, and continues to infringe, the '946 Patent either directly or through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

6. KSOLO, INC. is a Delaware corporation with offices at 1333 Broadway, New York, NY. kSolo may be served with process by serving its registered agent, The Corporation Trust Company, at 1209 Orange Street, Wilmington, DE. kSolo has made, sold, offered for sale, and offers for sale products and services that infringe one or more claims of the '946 Patent. kSolo has infringed, and continues to infringe, the '946 Patent either directly or through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

7. ENTERTAINMENT CORPORATION d/b/a SOUND CHOICE ACCOMPANIMENT TRACKS ("Sound Choice") is a North Carolina corporation with offices at 14100 South Lake Drive, Charlotte, NC. Sound Choice may be served with process by serving its registered agent, Kurt J. Slep, at 14100 South Lake Drive, Charlotte, NC. Sound Choice has made, sold, offered for sale, and offers for sale products and services that infringe one or more claims of the

'946 Patent. Sound Choice has infringed, and continues to infringe, the '946 Patent either through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

III. BACKGROUND

8. Dr. Scott Lewis is an individual residing in Los Gatos, California. Dr. Lewis is the controlling manager of 1st Media and the inventor of many patents, including the '946 Patent.

9. Dr. Lewis received B.S. and M.S. degrees with honors in mechanical and electrical engineering from M.I.T. Additionally, he earned a Ph.D. from Oxford University in adaptive digital signal processing as a Marshall Scholar and an M.B.A. from Harvard Business School. Dr. Lewis is a pioneer in the use of broadband internet and multimedia applications. He led the development of single-chip video and audio compression solutions, as well as the first automotive video cellular telephone.

10. Dr. Lewis is the inventor of a number of patents in multimedia communication technology including the separation, processing and recombination of multiple streams of multimedia data. This processing can include enhancement, compression and other forms of data manipulation. The inventions of Dr. Lewis' patents are used in many online entertainment systems.

III. PATENT INFRINGEMENT

11. Each of the Defendants has infringed the '946 Patent either directly or through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

12. Napster and RealNetworks have infringed, and continue to infringe, at least claims 1, 3, and 16 of the '946 Patent. Specifically, Napster and RealNetworks each own and/or operate websites available over the World Wide Web – commonly referred to as the Internet – through which

they make their respective products, systems, and/or services available to the world at large. Napster and RealNetworks infringe the '946 Patent through certain of these websites and certain products, technologies and/or applications employed thereon or available therefrom.

13. kSolo and Sound Choice have infringed, and continue to infringe, at least claim 16 of the '946 Patent. Specifically, kSolo owns and/or operates one or more websites available over the Internet through which it makes its products, systems, and/or services available to the world at large. kSolo infringes the '946 Patent through certain of these websites (namely, www.ksolo.com) and certain products, technologies and/or applications employed thereon or available therefrom. Sound Choice partners with Napster and RealNetworks, among others, to distribute Sound Choice audio and video content over the Internet. As a consequence of its partnerships (or similar business arrangements or ventures), Sound Choice is liable to Plaintiff as a contributory infringer and/or as an active inducer of infringement.

14. The Defendants' infringement, contributory infringement, and/or active inducement of infringement has injured 1st Media. The Defendants are, thus, liable to 1st Media in an amount that adequately compensates 1st Media for their infringements, which by law cannot be less than a reasonable royalty.

15. The Defendants' infringement, contributory infringement, and/or active inducement of infringement has been willful and deliberate because each Defendant has been given notice of or, upon information and belief, knew of the '946 Patent and has nonetheless injured 1st Media. The injury to 1st Media will continue unless and until this Court enters an injunction prohibiting further

infringement and, specifically, enjoining further manufacture, use, sale and/or offer for sale of products or services that come within the scope of the '946 Patent.

IV. JURY DEMAND

16. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and LR 38-1.

V. PRAYER FOR RELIEF

Plaintiff 1st Media asks that the Court find in its favor and against the Defendants and that the Court grant Plaintiff the following relief:

a. Judgment that one or more claims of United States Patent No. 5,464,946 have been infringed, either literally and/or under the doctrine of equivalents, by one or more of the Defendants and/or by others to whose infringement the Defendants have contributed and/or by others whose infringement has been induced by the Defendants;

b. Judgment that the Defendants account for and pay to 1st Media all damages to and costs incurred by 1st Media because of the Defendants' infringing activities and other conduct complained of herein;

c. That 1st Media be granted pre-judgment and post-judgment interest on the damages caused to it by reason of the Defendants' infringing activities and other conduct complained of herein;

d. That this Court declare this an exceptional case and award 1st Media its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285;

e. That the Defendants be permanently enjoined from any further activity or conduct that infringes one or more claims of United States Patent No. 5,464,946; and

///

f. That 1st Media be granted such other and further relief as the Court may deem just and proper under the circumstances.

DATED: January 16th, 2007.

Respectfully submitted,

L. Kristopher Rath

L. Kristopher Rath (5749)
HUTCHINSON & STEFFEN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145

Jonathan T. Suder
Edward R. Nelson, III
FRIEDMAN, SUDER & COOKE
Tindall Square Warehouse No. 1
604 East 4th Street, Suite 200
Fort Worth, Texas 76102

ATTORNEYS FOR PLAINTIFF
1ST MEDIA LLC